

Truro Planning Board

Minutes of meeting Tuesday, 13 February 2007 – Truro Public Library

Members present: Ansel Chaplin, William Golden, Deborah Paine, Karen Snow, Robert Weinstein, William Worthington (chair).

Member absent: Nicholas Brown

also absent: Charleen Greenhalgh, Truro Assistant Town Administrator/Planner

Others attending: Alan Efromson, Truro Zoning Board of Appeals; Richard Lavin, developer; Chet Lay, Slade Associates; John McElwee, Felco, Inc.; Paul Morris, resident; David Reid, attorney; Ben Zehnder, attorney.

William Worthington called the meeting to order at 7:00 pm.

1. Minutes

Minutes of the meeting on 23 January were reviewed and one correction made. Ms. Snow moved approval as revised; second by Ms. Paine. Vote: 6-0-0 with Mr. Chaplin abstaining on item no.3.

The minutes of the site visit on 26 January were reviewed. Mr. Chaplin moved approval as presented; second by Ms. Snow. Vote: 4-0-2 (Ms. Paine and Mr. Weinstein abstaining as they were absent from that meeting).

The minutes of the work session on 30 January were reviewed. Ms. Snow moved approval as submitted; second by Mr. Weinstein. Vote: 6-0-0 with Mr. Chaplin abstaining on the Drinkwater Appeal.

2. Approval Not Required Plan: 2007-003 Mary T. Peters, 8 Aunt Mary's Road – Representative: Chet Lay, Slade Associates

Mr. Lay distributed copies of the plan to members of the Planning Board and summarized the proposal of Larry Peters to buy a corner of his mother's property to build a garage. In response to a question Mr. Lay responded that Mr. Peters' lot is currently 3 acres. [Mr. Worthington asked if there were additional questions. There being none,] Ms. Snow moved to accept 2007-003 as an ANR; second by Ms. Paine. Vote: 6-0-0.

3. Definitive Subdivision: John Reis, Inc., 450 Route 6 – Representative: John McElwee, Felco, Inc.

Ms. Paine stepped down at this time stating that she would speak as an abutter.

Mr. McElwee summarized the proposal for a 10-lot definitive subdivision on the site (9.92 acres of scrub pine forest with no wetlands encountered) stating that the existing roadway is 1300 feet long. He stated that the applicant is requesting a waiver from strict compliance with Truro's subdivision regulations in order to shift the road 5 feet north within the layout and thus provide distance from the abutters and sound mitigation. In response to Mr. Worthington's question, Mr. McElwee stated that a MESA (Massachusetts Endangered Species Act) application has been filed and that MESA has asked for additional information. Mr. McElwee stated that the applicant is working on establishing a neighborhood association to address road maintenance, greenery and dwelling restrictions and further stated that Planning Board approval is not being sought at this time with the realization that some items in the plan are not finalized.

In response to a question from Mr. Worthington about drainage, Mr. McElwee explained the drainage by referencing the plan. Mr. Worthington then asked for additional questions from Board members.

In posing a question about plantings, Ms. Snow asked what kind of trees would be planted and if they would not grow to encroach on the road in a period of several years. Mr. McElwee responded that he was not sure what type of trees were planned but that they would be some type of evergreen, indicating that

the depiction on the plan is not to scale. Ms. Snow stated that the Board needs more detailed information on where trees would be planted.

Mr. Weinstein stated that he was inclined to move continuation and that he had no questions. Mr. Golden also stated the he had no questions. Mr. Chaplin asked if Mr. McElwee was willing to specify replanting of trees in the buffer if the original trees died and to include in the homeowners' agreement that abutters would be consulted on the choice of trees, and Mr. McElwee responded affirmatively to both questions.

Debra Paine, indicating that she was speaking as an abutter and part-owner of the lot most affected and that she was also representing two other abutters, stated that she is very concerned about the line of sight where the proposed road intersected Shore Road and that noise and traffic from the proposed subdivision will impact the cottage-colony business of Tina Michaud. She further stated that Catherine Rouse's letter on behalf of the abutters had not been acknowledged and had been sent to Felco, Inc. and the Planning Board, among others; that the abutters want an 8-foot stockade fence and the road moved further than 5 feet; and requested that the Planning Board not make a decision until the landscaping is more detailed and a decision is made on the ESA application. Mr. McElwee states that he would look again at the planned road. Ms. Paine added that lot 5 was originally .75 acre and is now 1 acre.

Mr. Worthington asked if there were additional comments on the proposal from those in the audience, and there were none. Mr. Chaplin asked Ms. Paine if signage would alleviate concerns about the sight line, and she indicated that it would be helpful. She also stated that at least 7 children play regularly on both sides of Route 6A. Mr. Worthington stated that the application submitted had not been signed by the owner; Mr. McElwee then submitted a copy of a purchase and sale agreement stating that he believed Charleen Greenhalgh, Assistant Town Manager/Planner, had indicated was sufficient to meet that requirement.

[Following discussion of whether a date for continuation needed to be specified,] Mr. Weinstein moved continuation of the hearing to 13 March; second by Mr. Chaplin. Vote: 5-0-0.

Ms. Paine resumed her place at the table.

4. Preliminary Site Plan Review: John Rice

Mr. Worthington stated that he had received a request from Lester J. Murphy, attorney for Mr. Rice, for continuance of the hearing to 27 February and asked for a motion to open the hearing. Ms. Snow moved; second by Mr. Golden. Mr. Worthington stated that while no one was present to represent Mr. Rice, he felt it was [the] appropriate [time] for the Board to close the preliminary site plan hearing as it has been ongoing since August 2006. Mr. Chaplin expressed his reluctance to close the hearing on the preliminary site plan until the outcome of the application for a curb cut is known and that he favored continuation. Mr. Weinstein stated that information from the Town Planner indicated that the application for a curb cut was denied.

At this point Ms. Paine raised a procedural question: since the curb cut application was denied, does the applicant need to come back to the Planning Board with a new preliminary site plan? Mr. Worthington responded in the negative, indicating that the applicant could return with either a Definitive Plan or a new Preliminary Plan, but that a Preliminary Plan is not required. Mr. Worthington then asked for comments from neighbors. Paul Morris stated that the review has gone on for a long time and long enough. Ms. Snow expressed her desire to make sure that the neighbors understand that denying a Preliminary Plan does not affect the decision on the Definitive Plan. David Reid, attorney for the abutters, stated his opinion that the Board was on the right track in moving ahead. Mr. Chaplin moved to grant the continuance requested by Mr. Murphy, indicating that he was doing so not because he was persuaded that continuance was the correct action but to bring the issue to a head; second by Ms. Snow. Vote: 0-5-0 (continuance denied).

Ms. Snow stated that the Board had not addressed the list of waivers requested in the Preliminary Plan and that while she was inclined to deny the Plan, addressing the waivers would be helpful to the applicant.

Mr. Reid stated that he believed the waivers were addressed at the meeting on 9 January; the secretary checked the minutes of that meeting and confirmed that the waivers had been addressed. Ms. Snow moved not to accept the Preliminary Site Plan because of the concerns expressed by the Building Commissioner and because the application for a curb cut had been denied; second by Mr. Weinstein. Mr. Chaplin asked if the Board would accept an amendment to the motion to state the non-acceptance was without prejudice. The consensus of other members was that this was not necessary. Vote: 6-0-0.

5. Other issues

Mr. Worthington asked Mr. Chaplin if he had issues for consideration by the Board, and Mr. Chaplin replied in the affirmative, referring to Charleen Greenhalgh's memo about his 9 February e-mail message being a violation of the Open Meeting law. Mr. Chaplin stated that he wants the Planning Board to be aware that there is no violation and that this was confirmed in his consultation with an authority on the Open Meeting law. He further stated that he wants the Board to request the opinion of Town Counsel on whether the proposal by Goodheart Properties is in compliance with the Truro Zoning Bylaw.

Several members of the Board spoke against any discussion of the Goodheart proposal because it was not the agenda for this meeting. Mr. Chaplin pointed out that his e-mail request (addressed to Charleen Greenhalgh and sent to the entire Board) for a further opinion by Town Counsel was dated 9 February, and he suggested that the matter was properly before the Board under either the heading "Correspondence" or the heading "Any other business which may come before the Board". Ben Zehnder, attorney for Goodheart, spoke strongly against any discussion of the proposal tonight, stating that he and his client do not know the content of Mr. Chaplin's memo/message. Mr. Lavin, the developer and Mr. Zehnder's client, also spoke against any discussion. Ms. Snow stated that the e-mail communication was problematic but that the Board could not really discuss the Open Meeting law without Ms. Greenhalgh present. Mr. Chaplin stated that Mr. Zehnder contends that the proposal raises no issue with the Truro bylaws but that he (Mr. Chaplin) feels there is a very important issue.

Ms. Paine informed the Board that any discussion of the Goodheart proposal, which is not on the agenda, is a violation of the Open Meeting law and that she would leave the meeting if discussion continued. Mr. Worthington stated the need to move on and suggested that the Cape Cod National Seashore be invited to the Planning Board meeting on 13 March to discuss the relationship between Seashore regulations and the Truro Zoning Bylaw. Mr. Zehnder and Mr. Lavin both spoke against having the CCNS present at the continuation of the hearing on the Goodheart proposal, to which Mr. Worthington responded that a request for continuation of the hearing could be made.

6. On-site meeting

Mr. Worthington distributed to Board members an invitation to an on-site meeting related to the Perry residence at 37 Corn Hill Road at 11:30 AM on February 20th.

7. Informal discussion on zoning issues – Representative: Alan Efromson, member of the Zoning Board of Appeals (ZBA)

Mr. Efromson began by stating that the Zoning Board had asked that he come to the Planning Board to discuss some issues of mutual concern, referring to two documents that members of the Planning Board had received, and he distributed a document setting forth the two issues to be discussed.

First issue – Separation between buildings in a cottage colony

Mr. Efromson pointed out that the Bylaw specifies two different separation distances in Sections D and E and that the Building Commissioner has approved the lesser distances specified in Section E. He further stated that while he is not a lawyer, he has consulted with one; that in statutory construction the specific

takes precedence over the general and therefore Section D takes precedence over Section E; and that he is coming to the Planning Board for clarification.

He also noted that the ZBA members, as authors of the Bylaw, are not in agreement on this issue.

Mr. Weinstein asked why the ZBA is focusing on separation distances when Town Counsel has raised other more fundamental issues, e.g. the definition of a cottage colony. Mr. Efromson responded that he was at the meeting representing ZBA and was asked to present these two issues. Mr. Worthington stated that the issue of separation distances is very important because it involves machinery digging holes (rather than being a theoretical issue). He went on to explain the history of the bylaw and that the intention was 30 feet of separation, explicitly stated. Ms. Snow offered a rationale for a different interpretation of the bylaw.

Mr. Efromson stated that the Building Commissioner is the enforcement officer for ZBA (Mr. Worthington adding that he is also the enforcement officer for the Planning Board) and can be instructed to follow the interpretations of the two Boards. Mr. Weinstein suggested that it would be helpful to have a friendly sit-down among the Planning Board, ZBA, and the Building Commissioner. Ms. Paine informed the Board that ZBA and the Planning Board cannot meet together because one is regulatory and the other deals with appeals. She expressed her opinion that it would be easier and more efficient to rewrite the bylaw even if it takes a year. Mr. Chaplin agreed that it is an issue for Town Meeting. Mr. Worthington asked if it wouldn't be productive for the Planning Board to meet and discuss these issues with the Building Commissioner, and Mr. Golden also spoke in favor of this approach.

Second issue – Height of a building in a cottage colony

Discussion then turned to the height of a cottage colony and the lack of clarity on what constitutes a story and a half, and Mr. Efromson distributed copies of a memorandum to the ZBA on this topic from Thomas J. Wingard, Building Commissioner, dated 23 August 2006. Mr. Worthington said that Mr. Wingard has stated that there is no definition of the "half story" while he (with Ms. Snow's corroboration) pointed out that the Provincetown Bylaws contain such a definition.

8. Question on precedent

Mr. Weinstein asked if the Planning Board was setting precedent by allowing Ms. Paine to step down as a member of the Board and speak as a private citizen during the discussion on the proposal of John Reis, Inc. for a definitive subdivision. Mr. Worthington replied in the negative. Mr. Weinstein informed the Board that he had written a two-page letter to the Ethics Commission on the issues he had raised at the meeting on 9 January and that the response he received indicated that a written opinion could not be issued sooner than four to six weeks due to the press of other business.

At this point Ms. Snow moved for adjournment; seconded by Ms. Paine. The meeting adjourned at 9:05 pm without a vote on adjournment.

Respectfully submitted,

Sharon A. Sullivan, Secretary